IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

Bail Appl..No. 4807 of 2007()

CRIME NO.293 OF 2006 OF ERUMAPETTY POLICE STATION

: PETITIONER/3RD ACCUSED

ANISH, S/O.ARAVINDAKSHAN, AGED 26 YEARS,
VELETHIL HOUSE, CHITTANDA DESOM,
CHITTANDA VILLAGE, THALAPPILLY TALUK, THRISSUR.

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA,
REPRESENTING SUB INSPECTOR OF POLICE,
ERUMAPETTY, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4807 of 2007

Dated this the 9th day of August, 2007

ORDER

Application for anticipatory bail. The petitioner is the 3rd accused. Altogether 5 accused are arrayed as accused now. Accused 1 and 2 have already been arrested. The allegations are raised, inter alia, under Sections 452 and 308 I.P.C. Those are the non bailable offences alleged. The crux of the allegations is that the defacto complainant, a young woman aged about 27 years, a woman activist and a member of an organisation by name `Sthreesakthi' was allegedly attacked by the accused persons armed with dangerous weapons including an iron rod at her house at about 11.30 p.m on 15.12.2006. The complaint was promptly lodged before the police and the F.I.R was registered at 2.30 a.m on 16.12.2006. The 1st accused is named in the F.I.R. It is said that the other two accused are identifiable by sight. Investigation is in progress. The petitioner has been brought on the array of accused. He apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The petitioner is a neighbour of the defacto complainant. It is unlikely that the defacto complainant would

have referred to the petitioner in the F.I.R as a person identifiable by sight as she knows the name of the petitioner too well. It is further submitted that the petitioner has nothing to do with the alleged incident which took place in the residential premises of the defacto complainant. Directions under Section 438 Cr.P.C may be issued in favour of the petitioner to save him from the undeserved trauma of arrest and detention, submits the learned counsel for the petitioner.

3. The application is opposed by the learned Public Prosecutor . The learned Public Prosecutor submits that it was a wanton act of highhanded violence on the part of persons engaged in liquor business. On the apprehension that the defacto complainant was responsible for passing on information to the excise authorities who conducted a raid on the premises of the 1st accused, a calculated and planned attempt was carried out on the house of the defacto complainant. Though it is true that the victims have not suffered any serious and grievous injury, the learned Public Prosecutor submits that evaluation of the materials in an offence under Section 308 I.P.C cannot be made by merely looking at the actual injury suffered. Totality of circumstances must be taken into account, submits the learned Public Prosecutor .

4. The case diary was placed before me for my perusal. I have perused the same. Having considered all the relevant inputs, I

am unable to agree with the learned counsel for the petitioner that there is any features in this case which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I am satisfied, is a fit case where the petitioner must surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary and normal course.

This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-